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U.S. Department of Homeland Security
Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS. 3/F
425 Eye Street N.W.
Washington, D.C. 20536

File: WAC 01 275 50561 Office: CALIFORNIA SERVICE CENTER

Date: **JAN 05 2004**

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

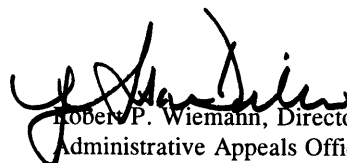
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded to the director to determine whether the beneficiary is qualified to perform the duties of the proffered position.

The petitioner operates a placement agency for healthcare professionals. It has 24 employees, a gross annual income of \$958,000, and seeks to employ the beneficiary as an accountant for a period of three years. The director denied the petition on the ground that the proffered position failed to qualify as a specialty occupation.

On appeal, counsel submits a brief and additional information asserting that the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The first issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The duties of the proffered position were detailed with the filing of the I-129 petition:

This individual will prepare the quarterly and yearly tax records, payroll statements and deductions, monthly expense reports and financial statements. She will direct the implementation of a general accounting system for keeping accounts and records of disbursements, expenses, tax payments and general ledgers.

[The beneficiary] will prepare balance sheets reflecting the companies assets, liabilities and capital. She will perform audits and prepare reports. [The beneficiary] will be responsible for updating and maintaining the account receivables that are outstanding. This individual must be fully knowledgeable in the field of accounting and have practical experience.

Subsequent to the filing of the initiating petition, the director requested additional evidence. Specifically, the director asked that the petitioner submit: proof of the beneficiary's education with copies of school transcripts; a certified labor condition application (LCA); and copies of any contracts between the petitioner and beneficiary, as well as copies of any contracts between the petitioner and any client where the beneficiary would perform services. The petitioner fully complied with that request.

In denying the I-129 petition, the director stated that the petitioner did not appear to have sufficient "volume of business activity" to require professional in-house accounting services.

On appeal, counsel asserts that: the proffered position is that of an accountant; the duties of the position are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree; and that a bachelor's degree is normally the minimum requirement for entry into the position. Counsel further asserts that the size of the petitioner's business is not determinative of whether the proffered position qualifies as specialty occupation.

The petitioner has qualified the proffered position as a specialty occupation. It is not the size of the petitioner's business operation or the petitioner's ability to pay an H-1B worker that determines whether a position qualifies as a specialty occupation, but rather the duties of the position and the industry of the petitioner's operations. See *Young China Daily v. Chappell*, 742 F. Supp. 522 (N.D. Cal. 1989). The duties to be performed by the beneficiary are complex and relied on by management in making strategic business decisions. For example, the beneficiary will prepare: quarterly and yearly tax records; monthly expense reports and financial statements; direct the implementation of a general accounting system for maintenance of company financial records; prepare balance sheets reflecting the petitioner's assets, liabilities and capital; and perform audits and prepare reports for management reflecting the findings of those audits. These duties are normally performed by accountants. See U.S. Department of Labor, *Occupational Outlook Handbook*, 2002-03 edition, (*Handbook*) at 21. The *Handbook* further notes that most accountant positions require at least a bachelor's degree in accounting or a related field. *Id.* at 22. The petitioner has, therefore, established that the proffered position is a specialty occupation. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The second and final issue to be discussed in this proceeding is whether the beneficiary is qualified to perform the duties of a specialty occupation.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), an alien must meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree

required by the specialty occupation from an accredited college or university;

- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons

in the occupational specialty who have achieved a certain level of competence in the specialty;

- (5) A determination by the Service that the equivalent or the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The director did not address the beneficiary's qualifications to perform the duties of a specialty occupation as she determined that the proffered position failed to qualify as a specialty occupation. The record is not sufficient to determine whether the beneficiary qualifies to perform the duties of the proffered position as there is no proof that the beneficiary's foreign degree is equivalent to a bachelor's degree in a specific specialty from an accredited institution of higher learning in the United States. 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). As such, this matter shall be remanded to the director to ascertain whether the beneficiary qualifies to perform the duties of a specialty occupation. The director may request such additional evidence as she deems necessary in making that determination.

ORDER: The director's February 11, 2002, decision is withdrawn. The matter is remanded to the director for entry of a new decision consistent with the directives of this opinion.